IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

::JUDGMENT::

GYARSI LAL SHARMA & ORS. VS. PUNJAB NATIONAL BANK & ANR.

D.B.CIVIL SPECIAL APPEAL (W) NO.391/2004 UNDER SECTION 18 OF THE RAJASTHAN HIGH COURT ORDINANCE 1949 AGAINST ORDER DATED 23.4.2004 PASSED IN SBCWP NO.2388/2004.

DATE OF JUDGMENT :: 15.1.2007

PRESENT
HON'BLE JUSTICE MRS.GYAN SUDHA MISRA
HON'BLE MR. JUSTICE K.C.SHARMA

Dr. R.K.Sharma for the appellants.
Mr. Rajendra Arora for the respondents.
BY THE COURT:

This appeal has been preferred against the order dated 23.4.2004 by which the writ petition filed by the petitioners/appellants herein who are the legal representatives of the deceased-Shri Gyarsi Lal Sharma had been dismissed. In the said writ petition the deceased predecessor of the appellant had claimed promotion on Middle Management Grade Scale-II which had been denied to him. While challenging the same, the deceased petitioner had challenged the promotion policy of the establishment on the ground that his performance in the interview was excellent and he also had the requisite additional qualification due to which he could not have been denied the promotion on the post of Middle

Management Grade Scale-II. The learned Single Judge was pleased to reject the contention of the deceased-petitioner as it was held that the promotion policy could not have been challenged after the petitioner had already appeared in the interview on the ground that he had performed well in the interview. On this count, the counsel for the respondent has submitted that the promotion policy of the Panjab National Bank was under challenge but challenge to the same was rejected vide order dated 14.9.1993 passed in SBCWP No.119/1988. Obviously, the petitioner could not have been allowed to challenge the said promotion policy by a second writ petition and therefore if the writ petition was rejected, it is difficult to entertain the appeal against the same as it is well settled that a second writ petition for challenging the subject matter of controversy which had been rejected earlier would be barred by the principle of constructive res judicata. The appeal thus has no substance and is fit to be dismissed.

The counsel for the appellant however, submitted that the respondents had not paid the retiral benefits to the legal representatives of the deceased

employee on even in regard to the benefit of the post on which he had functioned.

It goes without saying that the respondents shall pay the retiral benefits to the appellant-legal representatives for the post on which the deceased had duly functioned.

The counsel for the respondent refuted the aforesaid contention raised on behalf of the appellant-legal representatives of the deceased by stating that all retiral dues had already been paid to the deceased employee immediately after his retirement except a sum of Rs.8,827/- which amount is disputed and that amount too has already been paid to the deceased-employee. The appeal thus has no substance and hence it stands dismissed.

(K.C.SHARMA)J. (GYAN SUDHA MISRA)J.

PCG